April 18, 2005

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
MAY 19, 2005

ITEM 6

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING REGULATIONS THAT DEFINE THE TERM "INTERSTITIAL LIQUID LEVEL MEASUREMENT" AS USED TO DESCRIBE A MEANS OF LEAK DETECTION FOR UNDERGROUND STORAGE TANKS.

DISCUSSION

Management of underground storage tanks (USTs) in California is regulated under both federal and state law. Applicable federal law is found in the Resource Conservation and Recovery Act (RCRA), Subtitle I, Section 9003, and regulations implementing federal laws are found in Title 40 of the Code of Federal Regulations, Part 280. Applicable state law is incorporated into Health and Safety Code (HSC) Chapter 6.7, commencing with section 25280, and related regulations in Title 23, Division 3, Chapter 16, California Code of Regulations.

The Legislature enacted HSC Chapter 6.7 in 1984. Since then it has amended Chapter 6.7 in response to either federal mandates relating to USTs, or new information regarding changing industry practices or the performance of USTs meeting then-current UST regulatory standards in California. In 2002, in response to findings of widespread vapor releases from USTs in California, the Legislature passed Assembly Bill (AB) No. 2481(stats. 2002, ch. 999). AB 2481 required significantly improved continuous monitoring methods for newly-installed USTs, specifically that the interstitial space be maintained under vacuum or pressure.

HSC Chapter 6.7, section 25290.1(e), added by AB 2481, states that interstitial liquid level measurement methods may be used to satisfy the requirement that interstitial spaces of newly-installed UST systems be maintained under constant vacuum or pressure. Recently there has been significant debate about the meaning of the term "interstitial liquid level measurement" (ILLM) method as specified in HSC Chapter 6.7, section 25290.1(e), added by AB 2481. Debate has centered around which monitoring methods fit within the intended use of the term ILLM. To clarify the regulatory status of proposed ILLM methods prior to the effective date of the new UST requirements, July 1, 2004, the State Water Resources Control Board (State Water Board) adopted an emergency rulemaking to define ILLM. The purpose was to ensure that only ILLM methods that meet the performance goal of AB 2481 are allowed for USTs installed on or after July 1, 2004.

The proposed regulation will make permanent the existing emergency regulation. The regulation will clearly define the term "interstitial liquid level measurement method" as used in section 25290.1(e) of the HSC. Having a clear definition of this term in regulations will promote consistent application of this requirement by local regulatory agencies throughout the State. It will also forestall the installation of ILLM methods that do not meet the proposed regulatory definition, thus helping to ensure that the environment is adequately protected from releases of hazardous substances from UST systems. This regulation would not impact existing UST facilities, and would not affect the design or future applicability of the hydrostatic monitoring systems that have been used for many years on tanks.

POLICY ISSUE

Should the State Water Board adopt the amendments to the UST regulations as proposed?

FISCAL IMPACT

The State Water Board and Regional Water Quality Control Boards' staff will not be impacted by the proposed regulations.

State agencies will not be impacted by the proposed regulations because they make only technical, clarifying changes to current law and regulations.

RWQCB IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt a resolution amending the UST regulations to interpret, clarify, and implement legislative changes made to Chapter 6.7 of Division 20 of the HSC pursuant to AB 2481, and for additional reasons presented in the rulemaking record.

D R A F T April 18, 2005

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-

AUTHORIZING A RESOLUTION ADOPTING REGULATIONS THAT DEFINE THE TERM "INTERSTITIAL LIQUID LEVEL MEASUREMENT" AS USED TO DESCRIBE A MEANS OF LEAK DETECTION FOR UNDERGROUND STORAGE TANKS

WHEREAS:

1. Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment.

2. The State Water Resources Control Board (State Water Board) administers the Underground Storage Tank (UST) Program, and local agencies implement the program through UST permitting and enforcement.

3. Health and Safety Code Section 25299.3 of Chapter 6.7 authorizes the State Water Board to adopt regulations to implement Chapter 6.7.

4. In September 2002, the Legislature amended Chapter 6.7 by enacting Assembly Bill (AB) No. 2481 (stats. 2002, ch. 999), which established more stringent construction and monitoring standards for UST systems installed on or after July 1, 2004, including the use of "interstitial liquid level monitoring" for release detection.

5. There have been a variety of interpretations of the term "interstitial liquid level measurement", some of which do not offer the same level of environmental protection or reliable leak detection as was envisioned when AB 2481 was written.

6. To ensure that the environment is adequately protected from releases of hazardous substances from UST systems, the existing emergency regulation defining the term "interstitial liquid level measurement method" must be made permanent.

7. On October 22, 2004, the State Water Board published a Notice of Proposed Rulemaking for the proposed regulation. On December 10, 2004 the State Water Board held a public comment period regarding the proposed regulation. Comments were received and responded to in the rulemaking record, but no changes to the proposed regulation were found to be necessary.

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts the proposed UST regulations to implement, interpret, and make specific Chapter 6.7 of Division 20 of the Health and Safety Code, which will become effective as provided by the California Administrative Procedures Act upon approval by the Office of Administrative Law and filing with the Secretary of State, and directs the Executive Director to submit the proposed regulations to the Office of Administrative Law for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 19, 2005.

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Debbie Irvin
Clerk to the Board